

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
RONALD BREKKE,  
  
Defendant.

CASE NO. CR10-0328-JCC  
  
ORDER

This matter comes before the Court on remand from the United States Court of Appeals for the Ninth Circuit (Dkt. No. 445). The Court of Appeals has directed this Court to grant or deny a certificate of appealability for the Court's orders (Dkt. Nos. 440, 442) entered on January 20, 2021, and February 23, 2021. (*Id.*)

To obtain a certificate of appealability, a petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Mr. Brekke was convicted in 2012 of one count of conspiracy to commit theft of public money and three counts of wire fraud. (Dkt. Nos. 213, 294.) His convictions were affirmed on direct appeal. (Dkt. Nos. 317, 318.) Mr. Brekke later filed a 28 U.S.C. § 2255 petition, which the

1 Court dismissed with prejudice. *Ronald Brekke v. United States of America*, Case No. C14-1354-  
2 JCC, Dkt. Nos. 8, 31 (W.D. Wash. 2014).

3 The Court's orders now at issue stem from Mr. Brekke's filing of two motions asking the  
4 Court to find that his judgment of conviction was void *ab initio*. (Dkt. Nos. 434, 437.) In the  
5 motions, he asserts that his convictions should be set aside and he should be released from  
6 confinement because the judgment of conviction was void for lack of subject matter jurisdiction,  
7 fraud on the Court, and Sixth Amendment violations. (*Id.*) He also asked the undersigned to  
8 recuse himself from hearing the motions. (Dkt. No. 434 at 52.)

9 The Court issued an order on January 20, 2021, denying Mr. Brekke's request for recusal  
10 because Mr. Brekke did not identify any reason why the undersigned's impartiality could  
11 reasonably be questioned. (Dkt. No. 440.) The Court also denied Mr. Brekke's motions for relief  
12 from a void judgment, finding that because he was attacking the validity of his criminal  
13 conviction, his motions constituted an unauthorized successive § 2255 petition. (*Id.*) Mr. Brekke  
14 filed a motion for reconsideration (Dkt. No. 441), which the Court denied on February 23, 2021  
15 (Dkt. No. 442). In this Court's opinion, any reasonable jurist would reach the same conclusion  
16 and deny Mr. Brekke's motions.

17 Accordingly, the Court DECLINES to issue a certificate of appealability in this case. The  
18 Court DIRECTS the Clerk to forward the following documents to the United States Court of  
19 Appeals for the Ninth Circuit: Mr. Brekke's case file with the notice of appeal, the Court's final  
20 orders, and this order.

21 DATED this 29th day of March 2021.

22  
23  
24 

25 John C. Coughenour  
26 UNITED STATES DISTRICT JUDGE